

# EXHIBIT 1



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY )  
AVERAGE WHOLESALE PRICE LITIGATION )

) MDL No. 1456

)  
THIS DOCUMENT RELATES TO ALL )  
CLASS ACTIONS )  
01-CV-12257-PBS AND 01-CV-339 )

) CIVIL ACTION: 01-CV-12257-PBS

**[PROPOSED]  
CONSOLIDATED ORDER RE: MOTION FOR CLASS CERTIFICATION**

\_\_\_\_\_, 2006

Saris, U.S.D.J.

Plaintiffs have moved, pursuant to Fed. R. Civ. P. 23, for an order certifying a class in this action. Having considered the submissions of the parties and the record in this case, IT IS HEREBY ORDERED that plaintiffs' motion for class certification is GRANTED IN PART and DENIED IN PART as to the claims asserted in the Third Amended Master Consolidated Class Action Complaint ("TAMCAC"), as follows:

**I. CLASSES AND SUBCLASSES CERTIFIED**

1. The Court certifies the following Classes:

a. **Class 1: Medicare Part B Co-Pay Class.**

i. **Class Definition:**

All persons nationwide who made a co-payment based on AWP for a Medicare Part B covered Subject Drug<sup>1</sup> that was manufactured by AstraZeneca, the BMS Group, the GSK Group, the Johnson & Johnson Group, or the Schering

<sup>1</sup> The Subject Drugs are identified in the Table of Subject Drugs found at the end of this Order.

Plough Group.<sup>2</sup> Excluded from the Class are those who made flat co-pays; and the residents of the states of Alabama, Georgia, Iowa, Louisiana, Mississippi and Montana (where consumer protection statutes do not permit class actions).

ii. The Court certifies five Subclasses corresponding to each of the defendant groups

iii. The Court also certifies the following plaintiffs as Class 1 Representatives of these Subclasses: Leroy Townsend (Astra); Susan Aaronson (GSK, J&J, BMS); David Clark (GSK, J&J); Robert Howe (Astra, GSK); James Shepley (J&J, Astra); Estate of Patricia Young (BMS, J&J); Estate of William Newell (Astra, J&J, BMS), and UFCW and Sheet Metal Workers Health Fund For Schering. [To the extent that the Court finds any of these Plaintiffs inadequate, then Plaintiffs assert that the UFCW should be declared an adequate representative rather than leave the Class uncertified due to a lack of a plaintiff representative who made a co-payment under Medicare Part B.] Alternatively, the following individuals also made co-payments based upon AWP for drugs manufactured by Track One defendants: Cynthia Byrski (BMS, GSK); Estate of William Barnewolt (J&J, Amgen, Abbott, Watson); Cheryl Barreca (J&J, BMS, GSK); Mary Cauble (BMS); Anna Choice (BMS, GSK); Joyce Dison (BMS); Tracy Garcia (BMS, Schering); Donna Kendall (GSK, BMS, J&J); Sandra Leef (BMS, Aventis, Abbott, Fujisawa); Gerald Miller (BMS); Constance Nelson (BMS, GSK, B. Braun); Andrea Palenica (BMS, GSK); Scott Tell (GSK, BMS); Pauline Vernick (BMS, Aventis); Mardolyn Vescovi (BMS, J&J); Kathleen Weaver-Zech (J&J); Susan Wessels (Astra); Joseph Miller (GSK, Baxter, Abbott); Regina Shoemaker (BMS); Kenneth Vanderwal (J&J); Rebecca Hopkins (BMS); and George Baker Thomson (Astra). Each of the foregoing are Alternate Representatives for these Subclasses. Consistent with the Court's February 24,

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<sup>2</sup> These "groups" are defined in the TAMCAC.

2004, Memorandum and Order, the Representative of a Subclass need only have paid or reimbursed for one of the Subject Drugs manufactured or marketed by a defendant group.

iv. . The consumer protection act of each state shall apply to these Subclasses. Specifically, the Medicare Co-pay Class is certified for claims under the following statutes: (a) Alaska Stat. Code § 40.50.471, *et seq.*; (b) Ariz. Rev. Stat. § 44-1522, *et seq.*; (c) Ark. Code § 4-88-101, *et seq.*; (d) Cal. Bus. & Prof. Code §§ 17200, *et seq.*, 1770; (e) Colo. Rev. Stat. § 6-1-105, *et seq.*; (f) Conn. Gen. Stat. § 42-110b, *et seq.*; (g) Del. Code § 2511, *et seq.*; (h) D.C. Code § 28-3901, *et seq.*; (i) Fla. Stat. § 501.201, *et seq.*; (j) Haw. Rev. Stat. § 480, *et seq.*; (k) Idaho Code § 48-601, *et seq.*; (l) 815 ILCS § 505/1, *et seq.*; (m) Ind. Code Ann. § 24-5-0.5.1, *et seq.*; (n) Kan. Stat. § 50-623, *et seq.*; (o) Md. Com. Law Code § 13-101, *et seq.*; (p) Mass. Gen. L. Ch. 93A, *et seq.*; (q) Mich. Stat. § 445.901, *et seq.*; (r) Minn. Stat. § 325F.67, *et seq.*; (s) Mo. Rev. Stat. § 407.010, *et seq.*; (t) Mont. Code § 30-14-101, *et seq.*; (u) Neb. Rev. Stat. § 59-1601, *et seq.*; (v) Nev. Rev. Stat. § 598.0903, *et seq.*; (w) N.H. Rev. Stat. § 358-A:1, *et seq.*; (x) N.J. Stat. Ann. § 56:8-1, *et seq.*; (y) N.M. Stat. Ann. § 57-12-1, *et seq.*; (z) N.Y. Gen. Bus. Law § 349, *et seq.*; (aa) N.C. Gen. Stat. § 75-1.1, *et seq.*; (bb) N.D. Cent. Code § 51-15-01, *et seq.*; (cc) Ohio Rev. Stat. § 1345.01, *et seq.*; (dd) Okla. Stat. tit. 15 § 751, *et seq.*; (ee) Or. Rev. Stat. § 646.605, *et seq.*; (ff) Pa. Stat. § 201-1, *et seq.*; (gg) R.I. Gen. Laws. § 6-13.1-1, *et seq.*; (hh) S.C. Code Laws § 39-5-10, *et seq.*; (ii) S.D. Code Laws § 37-24-1, *et seq.*; (jj) Tenn. Code § 47-18-101, *et seq.*; (kk) Tex. Bus. & Com. Code § 17.41, *et seq.*; (ll) Utah Code Ann. § 13-1 1-1, *et seq.*; (mm) Vt. Stat. Ann. tit. 9, § 245 1, *et seq.*; (nn) Va. Code § 59.1-196, *et seq.*; (oo) Wash. Rev. Code § 19.86.010, *et seq.*; (pp) W. Va. Code § 46A-6-101, *et seq.*; (qq) Wis. Stat. § 100.20, *et seq.*; and (rr) Wyo. Stat. § 40-

12-100, *et seq.* The Court finds that plaintiffs have complied with the notice provisions of all consumer protection acts requiring such notice.

v. Class 1 is certified pursuant to Fed. R. Civ. P. 23(b)(3) for damage claims and (b)(2) for injunctive purposes.

b. **Class 2: Third-Party Payor MediGap Supplemental Insurance Class.**

i. **Class Definition:**

All Third-Party Payors that made reimbursements based on AWP for a Medicare Part B covered Subject Drug that was manufactured by AstraZeneca, the BMS Group, the GSK Group, the Johnson & Johnson Group, or the Schering Plough Group.

ii. The Court certifies plaintiffs UFCW, PMBT and Sheet Metal Workers Health Fund as the representatives for this Class.

iii. The Class 2 claims are certified for those states allowing corporations to bring consumer protection claims, including the following states:

(a) Alaska Stat. Code § 40.50.471, *et seq.*; (b) Ariz. Rev. Stat. § 44-1522, *et seq.*;  
(c) Ark. Code § 4-88-101, *et seq.*, including 4-88-113(f), and 4-8-102(5); (d) Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (e) Colo. Rev. Stat. § 6-1-105, *et seq.*, including § 6-1-113(1)C and § 6-1-102(b); (f) Conn. Gen. Stat. § 42-110b, *et seq.*, including § 42-110(a)(3); (g) Del. Code § 2511, *et seq.*, including 6 Del. Code § 2512; (h) D.C. Code § 28-3901, *et seq.*, including § 28-390(1); (i) Fla. Stat. § 501.201, *et seq.*; (j) Haw. Rev. Stat. § 480, *et seq.*, including § 481A-2; (k) Idaho Code § 48-601, *et seq.*, including § 48-602; (l) 815 ILCS § 505/1, *et seq.*; (m) Md. Com. Law Code § 13-101, *et seq.*, including § 13-101(h); (n) Mass. Gen. L. Ch. 93A, *et seq.*; (o) Mich. Stat. § 445.901, *et seq.*, including § 445-902(c); (p) Minn. Stat. § 325F.67, *et seq.*, including § 407.010(5); (q) Vernon's Mo. Rev. Stat. § 407.010, *et seq.*; (r) Mont. Code § 30-14-101, *et seq.*, including § 30-14-102(5); (s) Neb. Rev. Stat. § 59-1601, *et seq.*, including

§ 59-160(1); (t) Nev. Rev. Stat. § 598.0903, *et seq.*; (u) N.H. Rev. Stat. § 358-A:1, *et seq.*, including § 358A:1(1); (v) N.J. Stat. Ann. § 56:8-1, *et seq.*, § 56:8-1(d); (w) N.M. Stat. Ann. § 57-12-1, *et seq.*; (x) N.Y. Gen. Bus. Law § 349, *et seq.*; (y) N.C. Gen. Stat. § 75-1.1, *et seq.*; (z) N.D. Cent. Code § 51-15-01, *et seq.*, including § 51-15-01(4); (aa) Ohio Rev. Stat. § 1345.01, *et seq.*, including § 1345.01(B); (bb) Okla. Stat. tit. 15 § 751, *et seq.*; (cc) Or. Rev. Stat. § 646.605, *et seq.*, including § 646.605(4); (dd) 73 Pa. Stat. § 201-1, *et seq.*, including § 201-2(2); (ee) R.I. Gen. Laws. § 6-13.1-1, *et seq.*, including § 6-13.1(3); (ff) S.C. Code Laws § 39-5-10, *et seq.*, including § 39-5-10(9); (gg) S.D. Code Laws § 37-24-1, *et seq.*, including § 37-24-1(8); (hh) Tenn. Code § 47-18-101, *et seq.*, including § 47-18-103(9); (ii) Tex. Bus. & Com. Code § 17.41, *et seq.*, including § 17.45(4); (jj) Utah Code Ann. § 13-1 1-1, *et seq.*; (kk) Va. Code § 59.1-196, *et seq.*, including § 59.1-198; (ll) Wash. Rev. Code § 19.86.010, *et seq.*, including § 19.86.010(1); (mm) W. Va. Code § 46A-6-101, *et seq.*; (nn) Wis. Stat. § 100.20, *et seq.*; and (oo) Wyo. Stat. § 40-12-100, *et seq.*, including § 40-12-102(a)(i).

[Alternative:] iii. The claims for this Class are certified under Mass. Gen. Laws ch. 93A for the purposes of a test case, after which the Court will examine the issue of a broader certification.

iv. The Class is certified pursuant to Fed. R. Civ. P. 23(b)(3) for damage claims and (b)(2) for injunctive relief claims.

**Class 3: Consumer and Third-Party Payor Class for Medicare Part B Drugs Outside of the Medicare Context.**

i. Class Definition:

All persons and Third-Party Payors that made payments or reimbursements for physician-administered drugs based on contracts that expressly use AWP as a pricing standard, for a Subject Drug that was manufactured by AstraZeneca, the

BMS Group, the GSK Group, the Johnson & Johnson Group, or the Schering Plough Group. Included within this Class are individuals who paid coinsurance (*i.e.*, co-pays proportional to the reimbursed amount) for a Subject Drug, where such coinsurance was based upon use of AWP as a pricing standard. Excluded from this Class 3 are any payments or reimbursements for generic drugs that are based on MAC and not AWP.

- ii. The Court certifies five Subclasses corresponding to each of the defendant groups.
- iii. The consumer class representatives for Class 3 are: Cynthia Byrski (BMS, GSK); Estate of William Barnewolt (J&J, Amgen, Abbott, Watson); Cheryl Barreca (J&J, BMS, GSK); Mary Cauble (BMS); Anna Choice (BMS, GSK); Joyce Dison (BMS); Tracy Garcia (BMS, Schering); Donna Kendall (GSK, BMS, J&J); Sandra Leef (BMS, Aventis, Abbott, Fujisawa); Gerald Miller (BMS); Constance Nelson (BMS, GSK, B. Braun); Andrea Palenica (BMS, GSK); Scott Tell (GSK, BMS); Pauline Vernick (BMS, Aventis); Mardolyn Vescovi (BMS, J&J); Kathleen Weaver-Zech (J&J); Susan Wessels (Astra); Joseph Miller (GSK, Baxter, Abbott); Regina Shoemaker (BMS); Kenneth Vanderwal (J&J); Rebecca Hopkins (BMS); and George Baker Thomson (Astra). The TPP class representatives for Class 3 are: United Food and Commercial Workers Unions and Employers Midwest Health Benefits Fund ("UFCW"); Board of Trustees of Carpenters and Millwrights of Houston and Vicinity Welfare Trust Fund (CMHV); Teamsters Health & Welfare Fund of Philadelphia and Vicinity ("THWF"); Philadelphia Federation of Teachers Health and Welfare Fund ("PFTHW"); Man-U Service Contract Trust Fund ("Man-U"); Twin Cities Bakery Workers Health and Welfare Fund ("TCBW"); and the Sheet Metal Health Welfare Fund.
- iv. The law for the consumer claims for this Class is grouped as set forth in Class 1 above.

v. The law for the TPP claims is grouped as set forth in Class 2 above.

[Alternative:] vi. The claims for this Class are certified under Mass. Gen. Laws ch. 93A for the purposes of a test case, after which the Court will examine the issue of a broader certification.

## II. CLASSES NOT CERTIFIED

*[Language if Court declines to accept groupings beyond Massachusetts at this time.]*

1. With respect to Classes 2 and 3, the Court declines at this time to certify these Classes under the consumer protection laws of states other than Massachusetts. However, this denial is without prejudice. The Court intends the trial of the Massachusetts Classes to provide important information for an accurate evaluation of claims under other states' laws. Accordingly, at a later date plaintiffs can renew their motion to certify Classes 2 and 3 for purposes of the application of the consumer protection acts of other states.

2. The Court declines to certify a Class of Consumers and Third-Party Payors who made payments or reimbursements for self-administered drugs not appearing in the appended Table of Subject Drugs. This denial is with prejudice.

## III. MISCELLANEOUS

2. To the extent that it is not inconsistent herewith, this Court's August 16, 2005, Memoranda and Order Re: Motion for Class Certification is incorporated herein.

3. The Class Period for all Classes is January 1, 1991 to the present.

4. Excluded from these Classes are the defendants herein; any subsidiaries or affiliates of defendants; the officers and directors of defendants during the Class Period; members of the defendants' immediate families; any person, firm, trust, corporation, officer, director or any individual or entity in which any defendant has a controlling interest or which is

related to, or affiliated with, any of the defendants; the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded parties and governmental entities.

5. Pursuant to Fed. R. Civ. P. 23(g), the Court appoints the following firms as Co-Lead Counsel: Hagens Berman Sobol Shapiro LLP; Spector Roseman & Kodroff, P.C.; Hoffman & Edelson; The Wexler Firm; and Kline & Specter.

6. Co-Lead Counsel for Plaintiffs shall prepare and submit within 30 days from the date of this Order a proposed form and method of notice to be sent to members of the Classes and a supporting motion. Defendants may file any comments to the notice within 15 days, and Plaintiffs may reply 15 days thereafter. The motion and supporting memorandum shall not exceed 20 pages; any response by defendants shall not exceed 10 pages; and the reply shall not exceed 5 pages. There will be no sur-replies, supplemental replies, letter briefs, motions to strike or similar subterfuges for more briefing opportunity. There shall be no individual briefs by each defendant. The parties shall be reasonable with respect to any appendices.

7. The "Together Rx" claims are not certified because they are dismissed without prejudice by the filing of the TAMCAC.

8. The Court retains the discretion under Rule 23 to modify this Order.

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PATTI B. SARIS  
United States District Judge

**TABLE OF SUBJECT DRUGS**

**AZ NDC List**

<b>NDC</b>	<b>Description</b>
00186198804	PULMICORT RESPULES 60 mls 2 X 30.25mg/2mL
00186198904	PULMICORT RESPULES 60 mls 2x30 .5mg/2mL
00310096036	Zoladex 3.6mg 1x1EA Depot
00310096130	Zoladex 10.8mg 1x1EA Depot
00310095130	Zoladex 10.8mg 1x1EA Depot
00310095036	Zoladex 3.6mg 1x1EA Depot

**BMS NDC List**

<b>NDC</b>	<b>Description</b>
00015301026	BLENOXANE INJ 15 UNIT VHA
00015301020	BLENOXANE INJ 15 UNIT VL
00015306326	BLENOXANE INJ 30 UNIT VHA
00015306301	BLENOXANE INJ 30 UNIT VL
00590032435	COUMADIN INJ 5MG VIAL
00015053910	CYTOXAN 100MG LYOPH W/CYT
00015054812	CYTOXAN 1G 6X50ML VHA+
00015054810	CYTOXAN 1GM LYOPH W/CYTOG
00015054610	CYTOXAN 200MG LYOPH W/CYT
00015054912	CYTOXAN 2G 6X100ML VHA+
00015054910	CYTOXAN 2GM LYOPH W/CYTOG
00015054710	CYTOXAN 500MG LYOPH W/CYT
00015050001	CYTOXAN FOR INJ 100 MG
00015050041	CYTOXAN INJ 100MG
00015050641	CYTOXAN INJ 1X2GM VIAL
00015050241	CYTOXAN INJ 1X500MG VIAL
00015050141	CYTOXAN INJ 200MG
00015054712	CYTOXAN LYO 500MG VL VHA
00015054741	CYTOXAN LYOPH 500MG
00015053941	CYTOXAN LYOPHILIZED 100MG
00015054841	CYTOXAN LYOPHILIZED 1GM
00015054641	CYTOXAN LYOPHILIZED 200MG
00015054941	CYTOXAN LYOPHILIZED 2GM
00015050541	CYTOXAN PINJ 1X1G VIAL
00015050303	CYTOXAN TABLETS 50 MG
00015050302	CYTOXAN TABLETS 50MG
00015050401	CYTOXAN TABS 25MG
00015050301	CYTOXAN TABS 50MG
00015050348	CYTOXAN TABS 50MG
00015340420	ETOPOPHOS 100MG VIAL
00015321429	PARAPLATIN 10X15ML VHA+
00015321529	PARAPLATIN 10X45ML VHA+
00015321329	PARAPLATIN 10X5ML VHA+
00015321410	PARAPLATIN 150MG LYOPH CY
00015321430	PARAPLATIN 1X150MG LYO VL
00015321530	PARAPLATIN 1X450MG LYO VL
00015321510	PARAPLATIN 450MG VL W/CYT
00015321330	PARAPLATIN 50MG LYOPHILIZ
00015321310	PARAPLATIN 50MG W/CYTO
00015335322	RUBEX 100 MG LYOPHILIZED
00015335324	RUBEX 100MG IMMUNEX LABEL
00015335124	RUBEX 10MG IMMUNEX LABEL
00015335122	RUBEX 10MG LYOPHILIZED
00015335224	RUBEX 50MG IMMUNEX LABEL
00015335222	RUBEX 50MG LYOPHILIZED
00015347630	TAXOL 100MG INJ MULTIDOSE
00015347627	TAXOL 100MG SEM-SYN VIAL
00015347620	TAXOL 100MG/16.7ML VHA+ L

00015347911 TAXOL 300MG/50ML VIAL  
00015345620 TAXOL 30MG CONC FOR INJ  
00015347530 TAXOL 30MG INJ MULTIDOSE  
00015347527 TAXOL 30MG SEM-SYN VIAL  
00015347520 TAXOL 30MG/5ML VHA+ LABEL  
00015309510 VEPESID 100MG VIAL W/CYTO  
00015309530 VEPESID 100MG VL W/O CYTO  
00015306224 VEPESID 1G 50ML VIAL VHA+  
00015306220 VEPESID 1GM/50ML  
00015306120 VEPESID 500MG  
00015306124 VEPESID 500MG 25ML VL VHA  
00015309145 VEPESID 50MG CAPSULES  
00015309520 VEPESID INJ 100MG/5ML  
00015308420 VEPESID INJ 150MG/7.5ML

## GSK NDC List

NDC	Description
00173013093	ALKERAN I.V. INJ 50 MG
00173004535	ALKERAN TAB 2MG 50S
00173044902	IMITREX INJ 0.5ML 12MG/ML 5S VIALS
00173044901	IMITREX INJ 12MG/ML 0.5ML 2S PFLD SRNG
00173044903	IMITREX INJ 12MG/ML 0.5ML2S KIT,SELFDOSE
00173047900	IMITREX INJ 12MG/ML STAT DOSE KIT
00173047800	IMITREX INJ 12MG/ML STAT DOSE RFL 2'S
00173403291	IMITREX SELFDOSE SYSTEM SELFDOSE UNIT/C
00173408367	ITMD ZOVIRAX STERILE POWDER 1000MG (BWX9
00029415105	KYTRIL 1 MG TABS 20'S SUP
00029415139	KYTRIL 1MG TABS 2'S
00029415201	KYTRIL 1MG/ML INJECTION 4ML VIAL
00029414975	KYTRIL INJ SGL DOSE VIAL 1MG/ML VHA
00029414901	KYTRIL INJ SINGLE DOSE VIAL 1MG/ML
00173026010	LANOXIN INJ 0.5MG -PART 1.00
00173026035	LANOXIN INJ 0.5MG 2ML 50S
00173026210	LANOXIN INJ PEDIATRIC 0.1MG/ML
00173026015	LANOXIN INJECTION -PART 1.00
00173026055	LANOXIN INJECTION -PART 1.00
00173071325	MYLERAN TAB 2MG 25S
00173065601	NAVELBINE INJ 10MG 1ML
00173065644	NAVELBINE INJ 50MG 5ML
00173010793	RETROVIR IV INF 10MG/ML 20ML 10
00173041900	VENTOLIN NEB SOL INH 0.083% 3ML 25S
00173041901	VENTOLIN NEB SOL INH 0.083% 3ML 5S S
00173038501	VENTOLIN SOL INH 0.5% 5MG/ML 10ML
00173038558	VENTOLIN SOL INH 0.5% 5MG/ML 20ML
00173044200	ZOFRAN INJ 2MG/ML 20ML
00173044202	ZOFRAN INJ 2MG/ML 2ML 5S
00173046100	ZOFRAN INJ PRMXD 32MG/50ML
00173046200	ZOFRAN INJ PRMXD 4MG/50ML
00173056900	ZOFRAN ODT 4MG 5X2 30S
00173057004	ZOFRAN ODT 8MG 5X2 10'S
00173057000	ZOFRAN ODT 8MG 5X2 30S
00173048900	ZOFRAN ORAL SOL 4MG/5ML 50ML
00173068000	ZOFRAN TAB 24MG 1S
00173044601	ZOFRAN TAB 4MG 100S
00173044602	ZOFRAN TAB 4MG 100S UD
00173044600	ZOFRAN TAB 4MG 30S
00173044604	ZOFRAN TAB 4MG 3S
00173044701	ZOFRAN TAB 8MG 100S
00173044702	ZOFRAN TAB 8MG 100S UD
00173044700	ZOFRAN TAB 8MG 30S
00173044704	ZOFRAN TAB 8MG 3S
00173095201	ZOVIRAX FOR INJECTION 1000MG 20ML 10S (C
00173099501	ZOVIRAX FOR INJECTION 500MG 10ML 10S (C#

**J&J NDC List**

<b>NDC</b>	<b>Description</b>
57894003001	C168J REMICADE 1PCK
59676031201	PROCRIT 10,000 U/ML
59676031002	PROCRIT 10000 U
59676031001	PROCRIT 10000 U/ML
00062740103	PROCRIT 10000U/ML AMG
59676032001	PROCRIT 20,000 U/ML
59676030202	PROCRIT 2000 U/
59676030201	PROCRIT 2000 U/ML 6
00062740201	PROCRIT 2000U/ML AMG
59676030302	PROCRIT 3000 U/
59676030301	PROCRIT 3000 U/ML 6
00062740503	PROCRIT 3000 U/ML INST
00062740501	PROCRIT 3000U/ML AMG
59676030402	PROCRIT 4000 U/
59676030401	PROCRIT 4000 U/ML 6
00062740004	PROCRIT 4000 U/ML INST
59676034001	PROCRIT 40000 U/ML
00062740003	PROCRIT 4000U/ML AMG
00062542307	PWRWNG PERMANEN

**SP NDC List**

<b>NDC</b>	<b>Description</b>
59930151504	ALBUTEROL INHALATION SOLUTION
59930164702	ALBUTEROL INHALATION SOLUTION
59930150006	ALBUTEROL SULFATE INHAL. SOL.
59930150008	ALBUTEROL SULFATE INHAL. SOL.
59930151701	ALBUTEROL SULFATE SOLUTION
59930151702	ALBUTEROL SULFATE SOLUTION
59930155020	ALBUTEROL SULFATE SOLUTION
00085113601	INTEGRILIN
00085117701	INTEGRILIN
00085117702	INTEGRILIN
00085123501	INTRON A FOR INJ MULTIDOSE PEN
00085124201	INTRON A FOR INJ MULTIDOSE PEN
00085125401	INTRON A FOR INJ MULTIDOSE PEN
00085116801	INTRON A INJ 18MIU HSA FREE
00085113301	INTRON A INJ 25MIU HSA FREE
00085118401	INTRON A INJ 3MIU HSA FREE
00085118402	INTRON A INJ 3MIU HSA FREE
00085119101	INTRON A INJ 5MIU HSA FREE
00085119102	INTRON A INJ 5MIU HSA FREE
00085117901	INTRON A INJ PAK10MIU HSA FREE
00085117902	INTRON A INJ PAK10MIU HSA FREE
00085057102	INTRON A INJECTABLE 10MILLN IU
00085057106	INTRON A INJECTABLE 10MILLN IU
00085111001	INTRON A INJECTABLE 18MILLN IU
00085028502	INTRON A INJECTABLE 25MILLN IU
00085064703	INTRON A INJECTABLE 3MILLN IU
00085064704	INTRON A INJECTABLE 3MILLN IU
00085064705	INTRON A INJECTABLE 3MILLN IU
00085012002	INTRON A INJECTABLE 5 MILLN IU
00085012003	INTRON A INJECTABLE 5 MILLN IU
00085012004	INTRON A INJECTABLE 5 MILLN IU
00085012005	INTRON A INJECTABLE 5 MILLN IU
00085053901	INTRON A INJECTABLE 50MILLN IU
00085068901	INTRON A INJECTION 18 MIU
00085092301	INTRON A SOL FOR INJ 10 MILLI
00085076901	INTRON A SOL. FOR INJ. 25MILLN
00085095301	INTRON A SOLUTION 18MIU 3ML
59930160001	PERPHENAZINE
59930160002	PERPHENAZINE
59930161001	PERPHENAZINE 16MG
59930160501	PERPHENAZINE 8MG
59930160502	PERPHENAZINE 8MG
59930160301	PERPHENAZINE TABLETS
59930160302	PERPHENAZINE TABLETS
00085133601	PROVENTIL INHALATION SOLUTION
00085020901	PROVENTIL SOLUTION .083MG/ML
00085180601	PROVENTIL SOLUTION .083MG/ML
00085020802	PROVENTIL SOLUTION 5MG/ML

00085020852 PROVENTIL SOLUTION 5MG/ML  
00085125901 TEMODAR 100MG  
00085125902 TEMODAR 100MG  
00085124401 TEMODAR 20MG  
00085124402 TEMODAR 20MG  
00085125201 TEMODAR 250MG  
00085125202 TEMODAR 250MG  
00085124801 TEMODAR 5MG  
00085124802 TEMODAR 5MG

**CERTIFICATE OF SERVICE**

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing [PROPOSED] **CONSOLIDATED ORDER RE: MOTION FOR CLASS CERTIFICATION** to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on October 17, 2005, a copy to LexisNexis File and Serve for Posting and notification to all parties

By /s/ Steve W. Berman

Steve W. Berman

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# EXHIBIT 2

**KLINE & SPECTER**  
A PROFESSIONAL CORPORATION



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November 29, 2005

**VIA LEXISNEXIS**

Kristi T. Prinzo, Esquire  
**DAVIS POLK & WARDWELL**  
450 Lexington Avenue  
New York, NY 10017

Re: *In Re: Pharmaceutical Industry Average Wholesale Price Litigation; MDL No. 1456*

Dear Ms. Prinzo:

Plaintiff counsel have determined that the Estate of William Newell will be withdrawn as a proposed class representative principally because the Estate's claim duplicates that of other proposed class representatives in this case. The withdrawal will be formally effectuated at the next opportunity to address such matters in a Court filing. Therefore, the alleged documentary deficiencies referenced in your November 16, 2005 letter are moot and will not be further addressed.

Yours sincerely,

*Donald E. Haviland, Jr./tab*  
**DONALD E. HAVILAND, JR.**

DEH/jn

cc: All Counsel of Record (via LexisNexis)

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# **EXHIBIT 3**

**FILED UNDER SEAL**

# EXHIBIT 4



2005

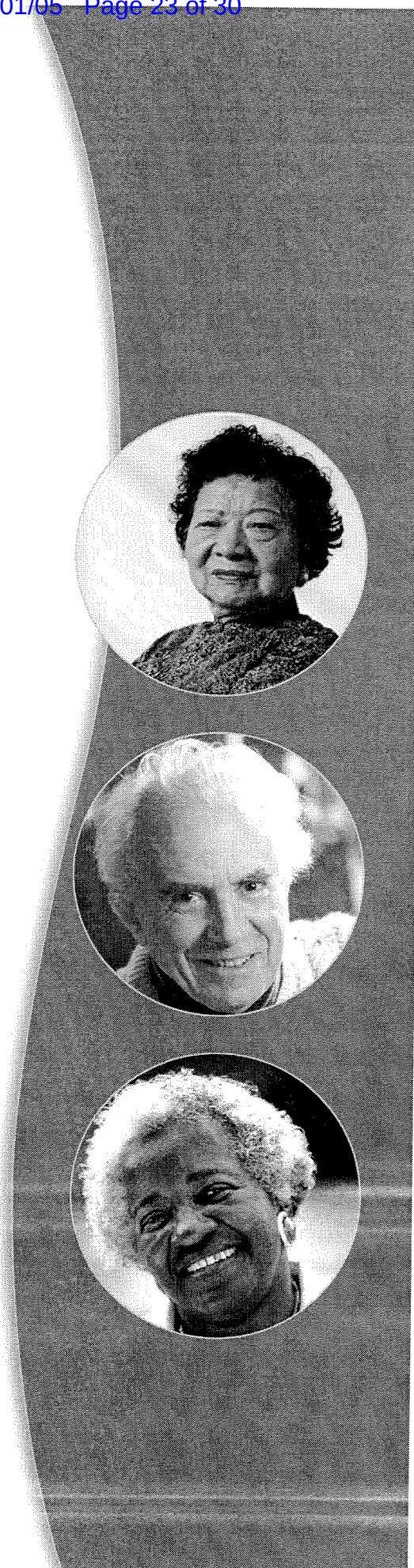
# Choosing A Medigap Policy:

## A Guide to Health Insurance for People With Medicare

**This official government guide can help you**

- Learn what a Medigap (Medicare Supplement Insurance) policy is.
- Decide if you want to buy a Medigap policy.
- Understand when you can buy a Medigap policy.
- Choose the Medigap policy that best meets your needs.
- Understand how Medigap policies will change when Medicare prescription drug plans start in 2006.
- Know where to go if you have questions.

Developed jointly by the Centers for Medicare & Medicaid Services (CMS) and the National Association of Insurance Commissioners





## How to use this Guide

There are two ways to find the information you need:

1. The “Table of Contents” on pages 1–2 can help you find the sections you need to read.
2. The “List of Topics” on pages 94–97 lists every topic in this Guide and the page number to find it on.

## Who should read this Guide

This guide was written to help people with the Original Medicare Plan understand Medigap (Medicare Supplement Insurance) policies.

A Medigap policy is private insurance that helps you pay for some of the costs that Medicare doesn’t pay for.

This guide explains in detail how Medigap policies work. It also includes information about new Medicare prescription drug plans (starting in 2006) and how these plans will change Medigap policies.

If you have a Medigap policy with prescription drug coverage, you should read pages 39–40.

The “2005 Choosing A Medigap Policy: A Guide to Health Insurance for People With Medicare” isn’t a legal document. The official Medicare Program provisions are contained in the relevant laws, regulations, and rulings.

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*section* 1



# How Medicare and Medigap Policies are Changing

Use this section  
to find out about  
the changes  
in 2006.

## Section 1: How Medicare and Medigap Policies are Changing

If you already have a Medigap policy or you are thinking about buying a Medigap policy, there are a few things you should know about what's new in Medicare and how Medigap policies are changing. Below is a quick look at these changes.

### **What's NEW in Medicare**

A new Federal law has brought many new changes to the Medicare Program. The following changes give you even more choices in how you get your health care benefits, including coverage for prescription drugs.

#### **Medicare prescription drug coverage—Starting in 2006**

- Enrollment in Medicare prescription drug plans starts in 2005. Medicare prescription drug plans will begin coverage on January 1, 2006.

#### **New Medicare-covered preventive services—Starts in 2005**

- Cardiovascular screening blood tests
- Diabetes screening tests
- “Welcome to Medicare” physical exam

To learn more about Medicare choices or changes, you can get a free copy of the “Medicare & You” handbook (CMS Pub. No. 10050) by visiting [www.medicare.gov](http://www.medicare.gov) on the web. Select “Search Tools” at the top of the page. This website also includes information on what Medicare health plans and Medigap policies are available in your area. Or, call 1-800-MEDICARE (1-800-633-4227). TTY users should call 1-877-486-2048.

## Section 1: How Medicare and Medigap Policies are Changing

### What's NEW in Medigap (Medicare Supplement Insurance) policies

#### New Medigap policies

The new Federal law gives you more choices in Medigap policies. In addition to Medigap Plans A through J, two new Medigap policies will be offered in 2005 (Medigap Plans K and L). Below is a quick look at the two new Medigap policies.

Medigap Plans K and L will offer

- different benefits than Medigap Plans A through J.
- lower premiums than Medigap Plans A through J.

If you live in Massachusetts, Minnesota, or Wisconsin, see pages 80–82.

If you use the benefits in Medigap Plans K and L, you will have to pay higher out-of-pocket costs than Medigap Plans A through J. Otherwise, Medigap Plans A through J may be cheaper.

To learn about the types of benefits that Medigap Plans K and L offer, see pages 19 and 21.

For more information about how Medigap Plans A through J are different from Medigap Plans K and L, see page 17.

**Note:** If you bought your Medigap policy before 1992 **or** live in Massachusetts, Minnesota, or Wisconsin, your Medigap policy may be called something different.

#### Changes to Medigap policies with prescription drug coverage

Medicare will start to offer prescription drug coverage starting January 1, 2006. Some Medigap policies offer prescription drug coverage, and the new Medicare prescription drug coverage will affect those policies.

**Note:** Medigap Plans H, I, and J are different from Medicare prescription drug plans.

- Beginning January 1, 2006, when Medicare prescription drug plans start, you won't be able to buy a new Medigap policy covering prescription drugs. These same policies may still be sold, but without prescription drug coverage.
- If the Medigap policy that you have now covers prescription drugs, you will get detailed information in the mail from your Medigap insurance company about your drug options (see page 39 and **Situation #8** on page 62). You will need to decide which drug option best meets your needs. Help will be available.

## Section 1: How Medicare and Medigap Policies are Changing

### **Where can I get more information about what's new in Medicare and Medigap policies?**

If you have questions about Medicare, Medicare prescription drug plans, Medigap policies, or other Medicare-related questions, you can visit [www.medicare.gov](http://www.medicare.gov) on the web.

Or, call 1-800-MEDICARE (1-800-633-4227). TTY users should call 1-877-486-2048. You can also call your State Health Insurance Assistance Program (see pages 85–86).

Words in green  
are defined on  
pages 88–91.